

# Northern Territory Racing Commission

## Reasons for Decision

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<b>Applicant:</b>	Mr F
<b>Respondent:</b>	Mybetshop
<b>Proceedings:</b>	Dispute Relating to Betting – Section 85 of the <i>Racing and Betting Act</i>
<b>Heard Before:</b>	Mr David Brooker (Presiding Member) Mr Philip Timney

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### Introduction

1. The Northern Territory Racing Commission has been asked to determine a dispute between MyBetShop and Mr F. MyBetShop is a licensed bookmaker regulated under the *Racing and Betting Act*. Mr F alleges that MyBetShop have failed to fully compensate him for winning bets placed by him on the 4 June 2011. MyBetShop rely on the contents of a wagering agreement between the two parties which is essentially the only material document of relevance in this matter.
2. The issue in point, which relies solely on the sensible construction of the wagering agreement, falls to whether MyBetShop informed Mr F that successful bets placed by him would be capped to the extent that MyBetShop losses would be limited to A\$5,000 for metropolitan races and A\$3,000 for non-metropolitan races.

### Material facts

3. The online portal for MyBetShop is the access point for the Terms and Conditions of account operation by customers of the bookmaker. All clients are bound by these Terms and Conditions and are expected to have consulted them prior to opening an account with the bookmaker. It is reasonable to assume that Mr F would be aware that his account operation with MyBetShop would be governed by the Terms and Conditions on the website.
4. That said, MyBetShop also prepared a specific supplementary client agreement, where at **Point 7** there was an express direction that the further Terms and Conditions that were agreed to should be read in conjunction with, 'all other terms & conditions as per our website'. Simply, MyBetShop saw fit to craft a bespoke document (the supplementary client agreement) for Mr F that would serve as an adjunct to the more general Terms and Conditions on the website. The thrust of the additional conditions contained in the supplementary client agreement is that they operate such as to limit the amount payable to Mr F on an event by event basis, and a weekly basis.
5. At **Point 1** of the supplementary client agreement the amount payable on a win in any one event is limited to, 'A\$5,000 on Metropolitan Races and A\$3,000 on Non-Metropolitan Meetings'. Further, at **Point 3** the supplementary client agreement limits the maximum amount of winnings payable over the course of a

week to '20K'. For the purposes of what follows one should also be aware that **Point 4** of the supplementary client agreement states that the account is to be, 'settled each Monday, unless otherwise agreed.'

6. Mr F commenced wagering with MyBetShop on 28 May 2011. On 4 June 2011 a series of bets were placed with MyBetShop by Mr F. These bets were placed using a method of betting known as Top Fluctuation. By the very nature of this bet type, it is impossible to calculate the liability for such wagers until the completion of an event.
7. The relevant issue that is at once obvious and problematic in determining this complaint is that without a Fixed Price being offered and agreed how is it that either party can be aware of whether the result of a winning Top Fluctuation bet will exceed the maximum payout amount previously agreed by the parties? MyBetShop claim that **Point 1**, as referred to above, provides a blanket limitation on their liability to the client in the event that *any* winning wager is placed. On the other hand, Mr F claims that it is illogical that the Top Fluctuation bet type would be included in this limiting clause.
8. Therefore, it is the content and construction of the supplementary client agreement by MyBetShop that Mr F disagrees with and which forms the basis of his complaint.

## Relevant considerations

9. It is not in dispute between the parties that a supplementary client agreement existed that contractually governed the relationship between MyBetShop and Mr F. It follows then that unless it can be established that the limiting clauses of the supplementary client agreement do not apply to the bet type Top Fluctuation then wagers placed by Mr F were transacted with a cap on payment and that ledger adjustments made by MyBetShop to winning bets that ultimately exceeded the cap were valid.
10. Mr F claims that the limiting codicils in the supplementary client agreement did not apply to all bet types that were offered by MyBetShop including Top Fluctuation bet types.
11. The Racing Commission has listened to a recording of a telephone conversation between Mr F and Mr G Westropp-Evans, an employee of MyBetShop and the representative responsible for opening the account in dispute, on 13 June 2011. It is clear from this exchange that Mr F is of the belief that the limiting clause in the supplementary client agreement did not relate to the Top Fluctuation bet type. Mr F gives a contemporaneous explanation of why his expectation that the limiting clause did not apply to Top Fluctuation betting is reasonable.
12. Similarly, there is little doubt that Mr Westropp-Evans is of the opinion that he had previously informed Mr F that the limiting clauses in the supplementary client agreement were blanket caps on payments for wagers of all kinds. In a Statutory Declaration executed on the 4<sup>th</sup> of August 2011 Mr Westropp-Evans details his belief that Mr F was aware of the restrictions on his account in relation to maximum payments for winning bets. Mr Westropp-Evans asserts a confidence that Mr F was, 'fully aware of our conditions in relation to our daily and weekly limits'. There is little else in the Statutory Declaration of use to the Racing Commission in relation to this matter.

13. Countering the assertions made in the Statutory Declaration of Mr Westropp-Evans are the statements made by Mr F during the phone call that he was of the view that the limiting clauses made little sense and that he would not sign anything because the agreement, 'made absolutely no sense'. This statement was not challenged by Mr Evans. Further, Mr F goes on to say that he was encouraged to commence transacting with MyBetShop by Mr Westropp-Evans; with the assumption being that the matter of the document would be resolved after Mr Westropp-Evans had spoken to his superior.
14. It is the view of the Racing Commission that, on balance, it is reasonable to find that Mr F held a genuine belief that the limiting clause in the supplementary client agreement did not apply to Top Fluctuation betting. He makes a cogent case to Mr Westropp-Evans as to the inappropriateness of this bet type being subject to limiting arrangements. He further asks in the telephone conversation the simple question; why was he not told at the time of placing the Top Fluctuation bets that those bets would be limited or capped to a winning dividend of A\$5,000 per event. The Racing Commission holds the view that this was a reasonable question to ask.
15. It is now necessary to establish whether there exists a nexus between the content of the supplementary client agreement and the reasonable belief of Mr F. In order to do this the Racing Commission must consider the content and construction of the supplementary client agreement. Arguably, the complaint rises and falls on establishing the true and reasonable meaning of the letter of 27 May 2011.
16. By grammatically deconstructing the supplementary client agreement the appropriate interpretation and import of the relevant points from the perspective of the Racing Commission can be established. Each relevant point will be considered in turn:
  - **Point 1:** Max win on any one event A\$5,000 on Metropolitan Races and A\$3,000 on Non-Metropolitan Meetings.

The word 'any' in this sentence is helpful to establishing that the limiting clause is in fact a catch-all determiner that suggests an indefinite quantity or number. 'Any' is used where the need or ability to define a quantity is not relevant or possible.
  - **Point 3:** Max win any one week is 20K.

Although this is an incomplete sentence it would be inconsistent to treat the use of the word 'any' in a different manner as above. That is, it is again a catch-all determiner that suggests an indefinite quantity or number.
17. On a plain English interpretation of the above points it is difficult to sustain the position of Mr F that the supplementary client agreement did not apply to Top Fluctuation betting. It can be construed from the letter that the author intended for the limits to apply to all betting forms and types with MyBetShop.
18. There can be no doubt that this letter amounted to an offer to Mr F to avail himself (that is, enter into a legally enforceable agreement) of bookmaking services provided by MyBetShop on the terms stipulated. After establishing the meaning and construction of the offer the Racing Commission must determine at what point was there acceptance of the supplementary client agreement. It is

prior to this time that Mr F could have sought clarification on points that he considered needed elucidation. By his conduct Mr F agreed to the Terms and Conditions as displayed on the web site home page of MyBetShop and further agreed to be bound by the supplementary client agreement at the time he placed the wager on 28 May 2011.

19. There is one final issue that the Racing Commission must address in order to determine this matter. At the time of writing the supplementary client agreement was it the true and full intention of the author that Top Fluctuation betting fall within the scope of the limiting clauses? That is, had MyBetShop, in fact, considered the impact of **Point 1** and **Point 3** on Top Fluctuation betting within the context of the limiting clauses in the supplementary client agreement? There is evidence to suggest that it had not, thus giving some credibility to the claim that although an agreement existed between the parties, and that the agreement related to 'any' bets placed on the account, MyBetShop may not have intended Top Fluctuation betting to fall within the scope of the limiting clauses.
20. It has already been mentioned that the operator who accepted the Top Fluctuation bets on behalf of MyBetShop made no effort to communicate to Mr F that his bets would in all likelihood exceed the limits should they be successful. It has further already been established that Mr F received no credible explanation when he asked how a client can place a bet to win a capped amount by using the Top Fluctuation bet type. On the facts, it also clear that no automated or manual system was in place to alter the ledger balance in a prompt and timely manner when bets were successful and the dividend payable exceeded the limit.
21. Of particular probative value in determining whether MyBetShop had contemplated inclusion of the Top Fluctuation bet type is the fact that it was not until Mr F rightly asked why successful bets were altered by use of a ratio but unsuccessful bets were not, that complete ledger adjustments (to winning *and* losing bets) were made. Simply, where Mr F had placed a successful wager that fell within the ambit of the limiting clause his bets were reduced, while bets that had been placed that were unsuccessful (that would have exceeded the limiting clause had they won) were left to stand.
22. For the sake of clarity an example of each of the above scenarios is warranted.
  - **Successful Wager** that would have exceed the A\$5,000 payout limit.  
\$2,000 to win at Top Fluctuation of \$9 – The customer stands to win \$16,000. By use of the post-event ratio the bet would be reduced to \$625 to win \$5,000. This requires a correcting entry and refund of \$1375 (Initial stake minus corrected amount).
  - **Unsuccessful Wager** that would have exceeded the A\$5,000 payout limit.  
\$2,000 to win at Top Fluctuation of \$7.5 – The customer stands to win \$13,000. By use of the post-event ratio the bet should have been reduced to \$770 to win \$5,000. This would require a correcting entry and refund of \$1,230 (Initial stake minus corrected amount).
23. In relation to the account of Mr F, while the adjusting entries for the winning bets were actioned on the same day that the bet was placed it was not until three days later that the adjusting entries for the losing bets were actioned. It is the

view of the Racing Commission that this is inconsistent with sustaining a position that Top Fluctuation bets were included within the limiting clauses of the supplementary client agreement. It certainly offends **Point 4** of the agreement that was detailed above in relation to the settlement of the account.

24. It is reasonable to ask how an account could be settled on Monday when correcting ledger entries were still awaiting action on the following day. It is similarly reasonable to ask why correcting entries for losing bets that were limited should not be actioned at the same time as correcting entries for winning bets that were limited. The simple answer may be that MyBetShop had not turned its mind in anywhere near a sophisticated way to the potentiality of post-event ratio adjustments, and therefore refunds, for losing bets that would have exceeded the limiting clause of the supplementary client agreement.
25. In consideration of the above issues the Racing Commission is in the invidious position of having to determine a matter that;
  - Has conflicting statements from the key individuals involved;
  - Includes a poorly worded agreement that has internal inconsistencies and style errors that could be read ambiguously;
  - Involves a clear deficiency on the part of MyBetShop in key areas of client account management (which enlivens its own separate causes of concern for the Racing Commission); and
  - Relies on complex mathematical re-calculations that have been made by MyBetShop in error (which again is of separate concern to the Racing Commission).

### **The quantum of the claim against Mybetshop**

26. The amount claimed by Mr F from MyBetShop is \$28,000. This figure is arrived at by letting all Top Fluctuation bets stand.

### **Subsidiary issue**

27. The Racing Commission requested and received copies of all account opening and customer identification documentation relevant to this matter. The Commission is satisfied that all compliance issues in relation to account opening formalities with regard to Mr F have been appropriately completed. It is standard procedure for the Racing Commission to request all account opening and identification information for all parties involved in a dispute.

### **Conclusion**

28. The Racing Commission has considered the validity and enforceability of the agreement between the two parties. The Commission is of the opinion that the combination of the Terms and Conditions displayed on the web site of MyBetShop and the supplementary client agreement amounts to an enforceable agreement at law between the parties. That said, the nature of the total agreement is at best ambiguous and at worst uncertain. The task of the Racing Commission in constructing a valid and enforceable agreement between the two parties can succeed only where the scope of the obligations and rights between the parties can be defined and established. At issue, and within the authority of the Racing Commission to determine, is whether any of the

surrounding factors detailed above give reason to depart from an outcome that relies solely on the literal interpretation of the Terms and Conditions displayed on the website and within the supplementary client agreement.

29. Mindful of the fact that there is a general reluctance at law to invalidate contracts due to uncertainty the Racing Commission takes the view that the true import of the total agreement can be ascertained via the enquiry conducted above. Additionally, the supplementary client agreement is sufficiently vague and imprecise to present the Racing Commission with some latitude in construing that document and thus the agreement as a whole. The reference point that the Racing Commission must keep in mind is one of ensuring that a sensible meaning can be realized from the total agreement.
30. The principal source of confusion in this matter arises as a result of the supplementary client agreement. It is the position of the Racing Commission that at no stage did MyBetShop intend, for the reasons outlined above, for Top Fluctuation bets to be included in the supplementary client agreement. It follows then that Mr F need not have considered that bets laid using the Top Fluctuation bet type would be capped under the supplementary client agreement. It is well founded at law that a party with a bargaining power deficiency be given some leniency when considering the true intention of a disputed agreement. In this matter it is Mr F who has been presented with a document that is uncertain (and it must be recalled that he was given comfort that issues raised by him regarding the supplementary client agreement would be revisited once he activated his account).
31. Where terms of an agreement are uncertain a court will often rely upon a variety of factors in order to bring some clarity to that bargain. Such factors as prior dealings, customs, trade-specific phraseology, and business efficacy are considered as good starting points for such efforts. In the present matter it is important to keep the preceding factors in mind, for there is clearly much substance to be found by taking the lead of the courts.
32. The present matter rises and falls on whether it is rational for the bookmaker to assume that a reasonable gambler would consider that Top Fluctuation bets could be excluded from an arrangement to cap returns at a particular level. Concomitantly, the matter could rightly be phrased in the alternate with the question asked whether a reasonable bookmaker could expect to be able to include Top Fluctuation bets in an agreement to cap returns of a particular account and that the reasonable gambler would accede to this. As detailed above, it is the very nature of the bet type in issue that makes it impossible to be able to determine a ceiling on the expected payout for a specific bet until the event or race is decided. As such the Racing Commission finds that neither the bookmaker nor gambler would have contemplated Top Fluctuation bets to be included in an agreement to cap potential winnings.
33. It is not inconsistent for the Racing Commission to find that an agreement between the parties can be found and that simultaneously it finds that Mr F should be paid for his Top Fluctuation bets. To be clear, the Commission considers that the only bets not covered within the supplementary client agreement are Top Fluctuation bets. Those bets then fall within the ambit of the Terms and Conditions on the website and as such are not capped to a maximum win of \$5,000.

**Decision**

34. It is apparent that MyBetShop failed to turn its mind to the prospect of Top Fluctuation betting when the supplementary client agreement was authored. Therefore, the Racing Commission finds that all bets stand and that Mr F be paid the winnings from his Top Fluctuation bets without the \$5,000 limit per race. The Racing Commission directs that MyBetShop pay Mr F the amount of \$28,000.

David Brooker  
Presiding Member

Philip Timney  
Legal Member

6 January 2012